IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 7461 of 2005

Between:

1. S. Jagan Mohan, S/o. Shankaraiah,
   R/o. H.No. 26/3-1, Chanakyapuri, Malkajgiri, Hyderabad.
2. S. Koushalya, W/o. S. Jagan Mohan,
   R/o. H.No. 26/3-1, Chanakyapuri, Malkajgiri, Hyderabad.

..... PETITIONERS

AND

The Commissioner, Malkajgiri Municipality,
Ranga Reddy District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order, or Direction, more particularly one in nature of *Writ of MANDAMUS* declaring the confirmation Notice No. 3/IV/2005 dated 23.03.2005 issued by the respondent as illegal, arbitrary, violative of Principles of Natural Justice and also violative of Article 300-A of Constitution of India and consequently set-aside the C.O.No. 3/IV/2005 dated 23-03-2005.

Counsel for the Petitioner: MR.V.VISWANATHAM

Counsel for the Respondent: MR.POLISETTI

RADHAKRISHNA (SC FOR MUNCIPAL CORPORATION)

The Court at the admission stage made the following:

ORDER:

This writ petition has been filed by the petitioner declaring action of the respondent in issuing the Confirmation Order in C.O.No.3/IV/2005, dated 23.03.2005 issued by the respondent confirming the notice No.3/IV/2005, dated 14.03.2005 issued by the respondent, as illegal and arbitrary.

2. The grievance of the petitioners is that he purchased a plot bearing No.137 in Survey No.875/1, admeasuring 293.3 square yards under a Registered Sale deed bearing document No.3967/1997, dated 15.10.1997. He also further stated that his wife, who is second petitioner herein also purchased another residential house bearing No.26-1, in plot No.136, Survey No.875/1, admeasuring 200.00 square yards through a Registered Sale deed bearing document No.4335/1997, situated at Chanakyapuri, Safilguda, Malkajgiri Municipality, Rangareddy District and since from the date of purchase they are in peaceful possession and enjoyment of their respective properties. It is further contended that they have dismantled the existing structures and thereafter they made an application to the respondent seeking building permission for construction of ground + first + second floors and submitted building plan to the respondent. The respondent has accorded permission on 23.11.2000 and thereafter they started constructions in accordance with plan and constructed Ground + 2 floors and he has already raised pillars for construction of Pent House on the top of the 2nd floor. It is further contended that the respondent has issued notice dated 14.03.2005 purported to have been issued under Section 228(1) of A.P. Municipalities Act, 1965 alleging that he is making unauthorized construction of RCC columns for 3rd floor in contravention of the building rules and the said provisional order has been served on the petitioner on 14.03.2005. Immediately, on 17.3.2005 he submitted an explanation to the respondent in pursuance of the notice dated 14.03.2005. But without considering the explanation submitted by

him, the respondent has issued the impugned notice. Hence, the writ petition.

3. The respondent filed counter affidavit contending that the petitioners have raised RCC columns above the 2nd floor for construction of pent house without obtaining building construction permission from the respondent, which is required under Section 209 of A.P. Municipalities Act, 1965. Therefore, the respondent issued the Provisional Order Notice vide UCR No.3/IV/2005, dated 14.03.2005 under section 228(1) and (ii) of A.P. Municipalities Act, 1965 directing them to stop the illegal construction. But after receipt of the provisional order, the petitioners have not chosen to explain properly for rising of RCC pillars for construction of pent house. Therefore, the respondent has issued the impugned order.

4. Having regard to the facts and circumstances of the case, it is evident from the explanation given by the petitioners that they obtained permission only for construction of building, ground + two floors, but they raised pillars on the top of the second floor for construction of pent house. The action of the petitioners in rising pillars on the top of the second floor for construction of pent house is in violation of the sanctioned building plan, and therefore, there is nothing wrong in issuing the provisional order by the respondent, and thereafter issuing the impugned order after considering the explanation submitted by the petitioner. Therefore, I do not find any illegality in issuing the impugned order, and therefore, the writ petition fails and it is liable to be dismissed.

5. Accordingly, the writ petition is dismissed at the stage of admission. No order as to costs.

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(ELIPE DHARMA RAO, J)

Date: 01.07.2005

Ksn

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Malkajgiri Municipality,
Ranga Reddy District.

2. 2 CD copies

3. 1 CC to MR.POLISETTI RADHAKRISHNA (SC FOR MPL)

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